LAWYERS AND THE TRUSTS.

BY FRANK GAYLORD COOK.

PRESIDENT ROOSEVELT, in his address at the Harvard Commencement last year, made a grave charge against members of the legal profession. "We all know that, as things actually are, many of the most influential and most highly remunerated members of the Bar in every centre of wealth," he declared, "make it their special task to work out bold and ingenious schemes by which their wealthy clients, individual or corporate, can evade the laws which were made to regulate, in the interests of the public, the uses of great wealth."

Coming, as it does, from such a conspicuous source, on such a prominent occasion and with such earnest emphasis, this charge should receive the serious attention of the community and of the Bar. It deeply concerns the community, because, if true, it points to a combination of wealth and legal skill—little short of a conspiracy—against the public welfare, a scheme to defraud and despoil the public for private gain, and in defiance and contempt of the law. And it vitally concerns the Bar, because such employment by its members compromises its honor, reputation and usefulness.

In making this charge, the President, of course, does not overlook, but would freely acknowledge the great—if not indispensable—service rendered by members of the legal profession in the modern industrial development. To their foresight and counsel much credit is due for the recent rapid development of cooperation in business, resulting in great saving in the cost of production, administration and distribution. Few great enterprises and few important changes in business methods are undertaken without legal advice; and the office of legal counsel is as essential to corporations as is the office of director or president.

It would be readily admitted, also, that when, as is often the case, a statute is ambiguous or capable of different interpretations, a lawyer may properly base his advice on the interpretation most favorable to his client's interest. The President may have had in mind cases in which lawyers have deliberately aided or abetted breaches or evasions by their clients of laws which either are unequivocal or have been explicitly interpreted by competent tribunals; and it may well be with the relation to competitors and consumers of certain forms and practices of modern industrial development that the charge has to do. Thus applied, it arraigns those lawyers who, by lending their legal knowledge and skill, enable individuals and corporations, through secret agreements and other schemes, to prey on the public with impunity and contrary to law, by exacting unequal or exclusive rebates and other advantages, by suppressing freedom of trade, or by enhancing prices. And it at once raises the question whether such conduct of members of the legal profession is consistent with their duty to the public, to the courts, and to their associates at the Bar.

An answer to this question may be reached through a brief examination of the nature and purpose of the legal profession. The practice of law is not simply a business, to be followed solely for personal gain. It is, first of all, a public service. The law is mainly a body of principles, developed from human experience running back far into the past, which have been applied, and are capable of being applied, to a great variety of circumstances; and the practice of law involves the nice and delicate adjustment, in orderly, customary forms, of those principles to human relations, for the settlement of disputes and the attainment of justice. Not every man is permitted by society to undertake this service. Only such are admitted to practice as, being citizens of full age and of good moral character, reveal, upon examination by public authorities, a sufficient knowledge of the history and meaning of legal principles, and a sufficient capacity to apply those principles to the circumstances of life and business. The practice of law has other marks of a public office. Before it can be undertaken, the sanction of an oath is required of the candidate, and a certificate under the seal of the State is issued to him granting him a license to practise.

Thus qualified and commissioned, the lawyer is, first of all,

an agent and servant of civil government, and, as such, his office is as distinct and important as are those of the judge and the jury. His first duty is to assist them in the administration of the law, in the support of the civil government and in the dispensation of justice, by a truthful and accurate presentation of the evidence and the law. Indeed, his public duties are the ones first embraced in the oath he takes, upon assuming his office of attorney. He swears to support the Constitutions of the United States and the State, and to conduct himself "with all good fidelity, as well to the courts," as to his clients.

If, then, a lawyer knowingly aids the evasion or defeat of the law, is he not false to his oath and to his trust? A judge or juryman who is found guilty of such conduct is held in contempt, visited with punishment, and ejected from his office. Why is the lawyer treated with less severity, or held to a lower standard?

One reason is that the lawyer's duty to the State is often deferred or overlooked in his devotion to his client, and this attitude is too often approved or encouraged, not only by the thoughtless public, but also by his professional brethren, and even by the courts. It has been openly favored by distinguished judges.

"An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client, by all means and expedients, and at all hazards and costs to other persons, is his first and only duty; and, in performing this duty, he must not regard the alarm, the torments, the destruction he may bring upon others. Separating the duties of a patriot from those of an advocate, he must go on reckless of consequences, though it should be his unhappy lot to involve his country in confusion."

This statement, imputed to Lord Brougham, may have had some qualification, either in the mind of its author or in the circumstances under which it was uttered. But, as stated, it leaves an impression of the lawyer's function which is entirely unwarranted in legal principle.

This one-sided view, that a lawyer is first an advocate, is encouraged by the indulgence of the courts. If he be faithless to his client by withholding or misappropriating the latter's money, he is likely to be disbarred. But if, as counsel for a great corporation, he advises or devises methods for evading the laws or defeating judicial process, he is not, as a rule, held to answer for this treachery, to the State and the court.

Likewise, the public demand and applaud, first of all, his fidelity to his clients. Popular sentiment imputes to the men of wealth and power, who nominally fill the principal offices of a great corporation, its grinding exactions and illusive, intangible policy; while it overlooks or excuses the corporation counsel, who, trained in the law, fertile in resources and bold in execution, inspires and guides the policy that leads to extortion, oppression and lawlessness.

Another reason for the neglect or disregard of the lawyer's duty to the State and the courts is found in the deficiencies of legal education. Our Law Schools and our official examinations for the Bar do not properly inculcate the nature and duties of the profession. The subject of legal ethics receives scant, if any, attention. In the Yale Law School, it receives but five lectures during the whole course of three years. In the Law School of Michigan University, it merely shares with the subjects, "Preparation, Trial and Arguments of Cases," one lecture a week for a single term. In the Law School of Chicago University, it is placed among the "Non-credit Courses." While, in the Law Schools of Harvard and Columbia Universities, it has no place whatever in the curriculum. "The design of this School," reads the prospectus of the Harvard Law School, "is to afford such a training in the fundamental principles of English and American law as will constitute the best preparation for the practice of the profession"; and yet this school—one of the largest and otherwise one of the most exacting Law Schools in the United States,—in its curriculum wholly overlooks or disregards instruction in the ideals, the limitations and the obligations of professional conduct. In the examinations for the Bar, this subject is often either slighted or ignored.

From such a training, and from such an attitude in the public and the courts, the inference is easy that the practice of law is a business, to be followed on the same principles and with the same aims as are other business pursuits. Indeed, such was the argument of a distinguished lawyer, formerly a judge of a high court, before the graduating class of one of our prominent Law Schools. And the further inference may be made that the lawyer owes no duty to the State or to the courts that is not expressly embodied in law, especially when it conflicts with his client's immediate personal or pecuniary interest. Finally,

the conclusion may be reached that the lawyer may employ his special training and skill in law, and his privileged position before the courts, to aid a great aggregation of capital, not only in devising and executing its secret, devious schemes for appropriating without adequate return the wealth of the people, but even in avoiding the laws and in escaping the process of the courts.

In this view, the lawyer is merely a professional expert—no more responsible for the results of a course he has devised or advised than is a chemist for the misuse of a poison he has compounded. Nevertheless, his compensation,—direct in the way of fees and retainers, and indirect in the way of incidental opportunities for gain,—is often large in proportion to the success and the risk with which his advice has been followed.

In this contact,—often partnership, as it were,—with modern industrial combinations, the practice of law has suffered loss in its moral stamina and in the public respect. Too often has the pursuit of wealth become the chief—even the avowed—aim of conspicuous, brilliant members of the Bar. And yet, according to the early theory and traditions of the profession, such an aim was improper, if not unlawful. Under the strictest practice of the early Roman, French and English law, it was an honor or privilege of the lawyer to serve his client, and for such service was received no obligatory fee or compensation, but only an "honorarium" or voluntary gift or recognition. This uncommercial, unmercenary view of the legal profession is not unknown in modern times. In England to-day, it defines the relation of the Barrister to the client.

In an address before the Yale Law School, the late Senator Hoar said:

"If you will walk these high paths, you must abandon the pursuit of wealth as a principal or considerable object. Of course, the lawyer must have his '*quiddam honorarium.*' He must have his ample library. He must provide for his wife and children a comfortable home, lay up something for old age, and start his children in life with a good education, and the stimulant of his own good example. That is pretty much all. I hope to see our profession everywhere return to its ancient and healthy abhorrence of everything that savors of speculation in justice. When you are once known to the people, not as masters of the law, but as traders and traffickers seeking your own gain, the virtue has gone out of you."

In these words of Senator Hoar are well expressed what should be the ideals in the practice of law to-day. The lawyer, like the physician, should receive for his service such compensation as may be reasonable in view of the expenditure he has made in his preparation, the knowledge and skill he displays in his work, and the dignity and responsibility with which he has been clothed. When, beyond this, he grasps and aims at wealth, prostituting his special knowledge, skill, position and opportunities at the call of any capitalist or corporation and for any service in his power, even to the evasion of the law and the defiance of the courts, he not only loses sight of the ideals and obligations of his profession and degrades and disgraces its practice, but he becomes a peculiarly dangerous menace to the community, and should be held strictly accountable for a neglect of his duty and for a breach of his trust.

For such malpractice his restraint and punishment are easy. He is a sworn officer of the State and of the courts; and his official character as such should be inculcated and emphasized to-day in legal education, in public sentiment, and in the attitude of the courts. If a lawyer be convicted of knowingly and wilfully advising or devising for an individual or a corporation a breach of the law or a defeat of legal process, not only should he be debarred from further practice, but he should also be punished as a principal with his client for the offence he may thus have advised or committed.

Above all, at the present time there is need of the cultivation among lawyers themselves of the high ideals that distinguish and dignify their profession. As President Roosevelt declared in his address to the Harvard Alumni, already referred to: "This nation never stood in greater need than now of having among its leaders men of lofty ideals, which they try to live up to and not merely talk of."

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